

REMCHO, JOHANSEN & PURCELL, LLP
ATTORNEYS AT LAW

1901 HARRISON STREET, SUITE 1550
OAKLAND, CA 94612
PHONE: (510) 346-6200
FAX: (510) 346-6201
EMAIL: aw@rjp.com
WEBSITE: www.rjp.com

SACRAMENTO PHONE: (916) 264-1818

Robin B. Johansen
James C. Harrison
Thomas A. Willis
Karen Getman
Margaret R. Prinzing
Andrew Harris Werbrock
Harry A. Berezin

Joseph Remcho (1944-2003)
Kathleen J. Purcell (Ret.)

August 1, 2016

OFFICE OF GENERAL
COUNSEL

2016 AUG - 2 PM 12: 04

RECEIVED
FEDERAL ELECTION
COMMISSION

VIA EMAIL AND FEDERAL EXPRESS

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20436

Re: MUR 7079

Dear Mr. Jordan:

We are counsel to Ami Bera for Congress ("the Committee"), the principal campaign committee of Representative Ami Bera, Jennifer May in her official capacity as Treasurer, Representative Bera, and his wife, Dr. Janine Bera (collectively, "Respondents"). We write in response to the complaint filed by the Foundation for Accountability and Civic Trust on May 31, 2016 ("the Complaint"). The Complaint fails to allege any violation of the Federal Election Campaign Act (the "Act") or Commission rules, and should be promptly dismissed.

The Complaint repeatedly accuses Respondents of engaging in a "shell game." In truth, the only shell game here is the Complaint itself, which conflates two unrelated events solely for partisan advantage. The first involves the Congressman's father, Babulal Bera, who, earlier this year, pled guilty to making excessive contributions and contributions in the name of another.¹ As the Department of Justice itself has acknowledged, the Respondents had no knowledge of, or involvement in, the wrongdoing. At the press conference where he announced the plea bargain, U.S. Attorney Phillip A. Talbert stated:

Congressman Bera and his campaign staff have been fully cooperative in this investigation. . . . To date, there is no indication from what we've learned in the investigation that either the

¹ Plea Agreement, *United States v. Babulal Bera*, No. 16-cr-00097 (E.D. Cal. May 10, 2016).

170474-100000

congressman or his campaign staff knew of, or participated in, the reimbursements of contributions.²

The second involves allegations that Respondents "instructed" a number of Democratic candidates and their families to make contributions to the Committee with the understanding that Representative Bera's parents would contribute to those candidates' campaigns.³ But the Complaint provides absolutely no specific facts to show that there was a "scheme" between the donors, as it asserts.⁴

Moreover, under established Commission precedent, even if the Complaint's narrative is taken at face value, the course of conduct it imagines would not violate the Act. In MUR 4783, the Commission addressed a *sua sponte* submission by Peter Cloeren that alleged an arrangement similar to that alleged by the Complaint. According to his submission, Cloeren, who had previously donated the maximum to the congressional campaign of Brian Babin, agreed to make contributions to the campaigns of then-Senator Strom Thurmond and then-Congressman Steven Gill, with the understanding that those federal candidates would raise equivalent amounts from their donors for Babin.⁵ Though the federal candidates denied having such an arrangement, the Commission found that, even if that arrangement existed, it would not violate the Act. The Office of General Counsel reasoned that the contributions were not made in the name of another because Cloeren did not reimburse the other contributors for their contributions to the Babin committee, and Cloeren was not reimbursed for making his contributions to the Thurmond and Gill committees.⁶ Instead, each donor made his or her contributions from their own personal funds.

The Commission reached a similar conclusion in Advisory Opinion 1996-33. There, a state legislator running for Congress proposed to contribute surplus state campaign funds to the campaigns of several fellow state legislators, with the understanding that the legislators would contribute a roughly equivalent amount from their campaigns to the federal committee. The Commission concluded that the proposed exchange would be an impermissible transfer from the requestor's state committee to the federal committee. However, the Commission found that it would *not* violate the Act if the state legislators made contributions to the federal committee from their personal funds because those contributions "would not have

² John Myers, *'I have, in fact, done the crime': Rep. Ami Bera's father admits illegal campaign contributions*, L.A. Times (May 10, 2016).

³ See Complaint at 3.

⁴ Notably, while the Complaint identifies Dr. Janine Bera as a respondent, it does not identify a single contribution made by her that, in the Complaint's view, would violate the Act.

⁵ First General Counsel's Report, MUR 4783, at 29-31 (June 16, 1999).

⁶ See *id.* at 31.

Jeff S. Jordan
August 1, 2016
Page 3

originated with their committees, which would have received funds from [the requestor's] [s]tate committee."⁷ Thus, the Commission found that it does not violate the Act when one donor makes a contribution to one committee with the express understanding that a second donor will make a contribution to a second committee.

"The Commission may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the [Act]."⁸ Moreover, "[u]nwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true."⁹ Here, the Complaint offers nothing more than bald assertions and speculation to substantiate its imagined "shell game." And, even if the Commission accepts the Complaint's narrative at face value, it presents no violation of the Act or Commission rules. Accordingly, the Commission should promptly find that there is no reason to believe that Respondents violated the Act, and close the file.

Sincerely,



Thomas A. Willis
Andrew Harris Werbrock
Counsel to Ami Bera for Congress

AHW:PS
(00282704)

⁷ Advisory Opinion 1996-33.

⁸ Statement of Reasons, Commissioners Mason, Sandstrom, Smith & Thomas, MUR 4950 (Dec. 21, 2000); *see* 11 C.F.R. § 111.4(d).

⁹ *Id.*; *see* Statement of Reasons, Commissioners Mason, Sandstrom, McDonald, Smith, Thomas & Wold, MUR 5141 (Apr. 17, 2002).

170444166888